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C O N F I D E N T I A L SECTION 01 OF 02 TIRANA 000883

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SUBJECT: DRAFT LUSTRATION LAW - A POTENTIAL DISASTER FOR
ALBANIAN DEMOCRACY

Classified By: Ambassador John L. Withers II, reasons 1.4 (b) and (d)

¶1. (SBU) SUMMARY: After nearly 8 hours of debate in Parliament, including an opposition walkout and hour-long speech by the Prime Minister, the Speaker of Parliament used a procedural motion to postpone a vote on the draft Lustration Law until next week, claiming that pending amendments made a delay necessary. Both Albanian and international legal experts described the draft bill as an entirely unconstitutional attempt by the government to derail key investigations such as the one into the Gerdec explosion, and to essentially gut the judicial sector. The bill as drafted would allow the government to arbitrarily dismiss up to half of all sitting prosecutors and judges, as well as most of the senior level officials in the state intelligence service. Because the Berisha government has controlled the files which would be used as evidence to dismiss alleged former communist wrongdoers under the Lustration Law, the bill would give the government the power to smear and dismiss its opponents almost at will - a charge repeated frequently in recent days by the draft bill's many critics. END SUMMARY.

The Lustration Law Explained

¶2. (SBU) The claimed goal of the so-called Lustration Law is to allow for the dismissal from office of anyone who served in certain party or government positions or participated in "political processes" under the Albanian communist government - including anyone who served as a prosecutor or judge and took part in "political trials" under the communist regime. The draft bill requires a review of the files (files controlled for the past 4 years by the Berisha government) of practically all senior civil servants, all prosecutors and judges, senior police and military officials, anyone appointed by the President, as well as any candidates for parliament, president or PM. Anyone who held one of the specified positions under the communist government or party or was found to have collaborated with the communist-era secret police or even served as a witness for the "prosecution in a political process" would be subject to dismissal. The vague wording of the draft bill gives wide discretion to the government to determine what exactly is a disqualifying "political process" under the communist government.

Legal Experts Blast the Law

¶3. (SBU) Both Albanian and international legal experts have described the bill as blatantly unconstitutional. Although the serious flaws with the bill are almost too many to list, legal experts, including Embassy OPDAT and OSCE pointed to the following as the most troubling aspects of the draft bill:

-- The law would seriously circumvent the constitution by legislating procedures for the dismissal of judges, MPs and prosecutors that clearly conflict with procedures already laid out in the constitution and which give the President and High Council of Justice this authority.

-- The Lustration Law was drafted and passed through committee on a party-line vote with no transparency, and no input from opposition MPs or credible domestic or international legal experts.

-- The definition of key terms in the draft, such as "political trials" and "political processes" is deliberately vague, allowing the government vast leeway in determining whom to dismiss under the bill.

-- Article 5 of the bill says that persons subject to verification under the law cannot participate in any judicial process to review the law itself. This would effectively bar the Constitutional Court from reviewing the constitutionality of the law, because 2/3 of the members of the current court would be excluded under this provision. An OSCE review of the law stated that the entire goal of Article 5 is to prevent a review of this law by the Constitutional Court.

-- Also according to an OSCE analysis the draft law clearly undermines due process called for under the constitution by stripping officials of their jobs without a trial, the only body designated for adjudication is the "Authority for Checking Figures" is largely political and subject to influence. Although nominally

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balanced between two members of the majority party, two from the opposition and one non-partisan member, in the event of non-participation of the opposition members the government would be allowed to appoint substitutes to sit on the committee. Because the opposition has already stated it would take no part in this body, it is a certainty that the "Authority for Checking Figures" would be dominated by Berisha's Democratic Party.

Bill Designed to Gut Judicial Sector, Derail Investigations

14. (SBU) Politically, the draft Lustration Law was clearly aimed at derailing the Gerdec, Durres-Kukes and Fazlic investigations, among others. Under the provisions of the draft law, up to 2/3 of the Constitutional Court, 1/2 of the Supreme Court and up to eight senior prosecutors in the General Prosecutor's Office - including the lead prosecutorial investigators for the Durres-Kukes and Gerdec investigations - could have been dismissed.

Next Steps Still Unclear

15. (C) At this point, it is unclear what will happen next with the draft bill, although the vote on the bill has been tentatively rescheduled for December 22. Berisha clearly hoped to ram the bill through the parliament quickly and below the radar on Monday - a plan that was foiled over the weekend as opposition to the bill quickly began to take shape. On December 13, Prime Minister Berisha flew into a rage when Ambassador Withers called Berisha to express concerns with the Lustration Law - clearly Berisha had been hoping to sneak one by both the opposition and international community.

16. (C) The delay in the vote gives the bill's numerous opponents time to mobilize. We will monitor developments closely. If the Berisha government continues to insist on passing it in its present form, it may be essential that we deliver a strong message both publicly and privately outlining our concerns with the bill's blatant attempt to undermine independent institutions. Post will release a

press statement later today, welcoming the delay and calling for the final bill to meet international standards. The full text of the statement will be sent to EUR/SCE and EUR/PPD.

WITHERS